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December 20, 2005

BY HAND

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 05-85 - NSTAR Electric/NSTAR Gas

Dear Secretary Cottrell:

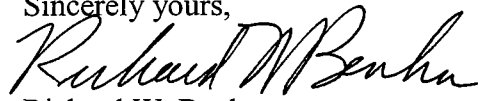
Enclosed for filing in the above-captioned matter please find the original and ten copies of:

- (a) The comment letter of The Energy Consortium.
- (b) The Energy Consortium's Conditional Petition to Intervene.

I have also enclosed a certificate of service.

Thank you for your attention to these matters.

Sincerely yours,


Richard W. Benka

RWB:dmc

Enclosures

cc: Robert N. Werlin, Esq.
Joseph Rogers, Esq.
Robert Ruddock, Esq.
Jerrold Oppenheim, Esq.



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One South Station
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Re: D.T.E. 05-85 - NSTAR Electric/NSTAR Gas

Dear Secretary Cottrell:

The Energy Consortium ("TEC"), by its attorneys and in accordance with the Department's Notice of Filing and Public Hearing of December 7, 2005, hereby respectfully submits comments on the proposed Settlement Agreement (the "Settlement") in this matter.

TEC recognizes that the Attorney General has negotiated a Settlement where increases in distribution costs (a) are substantially less than the Company would have otherwise sought, and (b) are offset by a deferral of transition costs. In addition to provisions to ameliorate the current high prices of electricity, the Settlement also contains provisions that address low-income arrearages and the service quality issues that have plagued the Company. TEC, therefore, does not oppose Department approval of the Settlement.

TEC, also, does not request an investigation and evidentiary hearing regarding the Settlement at this time. However, if and only if the Department determines that an investigation is warranted either on its own motion or on the motion of another commenting party, TEC requests leave to intervene in that investigation and is accordingly filing herewith a conditional motion to intervene.

TEC does note that although the Settlement contains broadly beneficial provisions, it was negotiated without meaningful opportunity for input and thoughtful comment from a number of stakeholders, including suppliers and C&I customers. The Settlement had, for example, been negotiated and agreed on before it was presented to TEC, which had two business days to review it and "sign on" if it chose. In these circumstances, although the Settlement, as outlined above, provides benefits to consumers, the process of reaching that Settlement unfortunately means that opportunities have been lost.

1. As the Attorney General noted just last year, in NSTAR Electric, D.T.E. 03-121 (2004), NSTAR “backed into” its current rates a decade ago, in 1995. *Id.* at 26. The Company’s last litigated rate case was in 1986, almost two decades ago. *Id.* at 56 (Commissioner Manning, dissenting). With respect to standby rates, the Attorney General thus recommended in D.T.E. 03-121 that the approval of standby tariffs be only “temporary,” with a “more permanent rate design” at the time of “NSTAR Electric’s next rate case.” *Id.* at 25. Similarly, Division of Energy Resources (“DOER”) stated that the “Settlement Tariff rates should remain in effect only until NSTAR Electric’s next general rate case when the Company will provide a fully allocated cost of service study” and “the cost to serve on-site general customers should be determined in the context of the next general rate case.” *Id.* at 34. The Department indicated that it “intends to investigate and address the issues raised by the Attorney General and DOER” in the context of the general investigation of interconnection tariffs in Docket D.T.E. 02-38. *Id.* at 51. But approval and implementation of the Settlement in the instant case means that more than two decades will have passed without any litigated examination of NSTAR’s allocated costs of providing standby service (or, for that matter, of NSTAR’s rate of return or allocated cost of service to any customer class).

The exclusion of significant stakeholder input has precluded much-needed progress on broader potential customer-driven opportunities to address reliability problems, market inefficiencies and high-cost load pockets for the benefit of all NSTAR customers. These include not only standby rates, and their effect on encouraging or discouraging distributed, on-site generation, but also programs to encourage energy efficiency, including demand-response programs or time-of-use rates. A number of TEC members are considering energy-related projects, but the Settlement process has not provided any interactive forum for establishing the potential benefits and costs of such programs or for establishing rates and terms and conditions that would facilitate such programs.

The Settlement Agreement acknowledges the existence of market inefficiencies that have bedeviled ISO-NE, the FERC, and utilities, suppliers and consumers in New England, including the “costs of energy,” “capacity reserves,” “operating reserves,” “transmission constraints,” and “unnecessary Reliability Must Run (‘RMR’) costs.” *See, e.g.,* Settlement §§ 2.32, 2.34. In response to these significant issues, the Settlement offers only vague representations: “NSTAR Electric and the Attorney General shall consult and attempt to reach agreement” regarding initiatives to “mitigate electricity market inefficiency costs”; “NSTAR Electric and the Attorney General shall work together to minimize unnecessary Reliability Must Run (‘RMR’) costs and will develop an incentive mechanism to limit the impact of RMR costs on NSTAR electric customers.” *Id.* The Department has addressed Information Requests 2-3 and 2-4 to these statements. Unfortunately, the Company’s responses are not illuminating and the mere representation that NSTAR and the Attorney General will “work together” and “attempt to reach agreement” neither guarantees any meaningful and timely resolution nor imposes an obligation that will be reviewable and enforceable by the Department, as

opposed to the opportunities that could have been provided through the timely creation of conditions encouraging specific potential customer-driven programs.

2. Because of the exclusion of a broad range of stakeholders from the negotiations, other issues of importance to C&I customers were also ignored in the Settlement. For example, power outages, including those of less than one minute, were not meaningfully addressed, with penalties applied to “poor performing circuits” defined only on the basis of being in the worst 5 percent of all of NSTAR’s circuits for three consecutive years based on SAIDI values. Settlement § 2.28. As another example, small C&I customers (who do not differ in significant respects from residential customers, including their access to competitive suppliers and the consequent ability to migrate from NSTAR basic service) should also be considered for long-term purchase of basic service supplies.

3. The Settlement provides that the “Settling Parties agree that ... Cambridge’s 13.8 kV facilities shall be reclassified as distribution facilities and recovered in distribution rates after a separate proceeding.” Information Request DTE 1-4 indicates that the review will be “part of the merger case.” It should be made clear that nothing in the instant Settlement constitutes approval of the reclassification.

4. Section 3.8 of the Settlement states that no tariffs promulgated under the Settlement Agreement shall recover costs more than once or through some other rate, charge or tariff, and further requires that any such collection be refunded with interest as soon as reasonably possible. While NSTAR and the Attorney General have indicated that the instant Settlement is not intended to resolve the issues pending in NSTAR Electric, D.T.E. 04-114/03-118, regarding the past double-counting and double-collection of transmission costs, the Department should make clear that any approval of the Settlement does not in any way restrict recovery of costs and interest from the NSTAR companies in such proceeding.

5. The Settlement contemplates proposals to make tariff definitions, rate eligibility and terms uniform for Boston Edison, Cambridge and Commonwealth customers effective on January 1, 2008, and to make consistent rate changes for all service territories through January 1, 2010 with “gradual consolidation and redesign of distribution rates” thereafter. Settlement §§ 2.11, 2.12, 2.17. Under the Settlement, NSTAR “agrees to confer with the Attorney General on such filings at least thirty (30) days before submission to the Department.” *Id.* §§ 2.11, 2.12. One lesson learned from the instant Settlement is that a settlement process where significant stakeholders are excluded until the eleventh hour may well result in lost opportunities and suboptimal terms. TEC requests that the Department order NSTAR to confer not only with the Attorney General but also with TEC and others commenting on this Settlement with respect to future merger and rate design issues.

Mary L. Cottrell, Secretary
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Thank you for your attention to these matters.

Respectfully submitted,


Richard W. Benka

RWB:dmc

Enclosures

cc: Robert N. Werlin, Esq.
Joseph Rogers, Esq.
Robert Ruddock, Esq.
Jerrold Oppenheim, Esq.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS
AND ENERGY**

Petition of Boston Edison Company,
Cambridge Electric Light Company,
Commonwealth Electric Company and
NSTAR Gas Company, Pursuant to
G.L. c. 164 § 94, and 220 C.M.R. § 5.00
et seq. for Approval of a Rate Settlement
Effective January 1, 2006

D.T.E. 05-85

**THE ENERGY CONSORTIUM'S CONDITIONAL
PETITION TO INTERVENE**

Pursuant to 220 C.M.R. §§ 1.01(4) and 1.03, The Energy Consortium ("TEC") hereby petitions for leave to intervene as a full-party intervenor in the above-referenced proceeding before the Department of Telecommunications and Energy ("Department") if and only if the Department, on its own motion or on the motion of another party, determines to open an investigation and evidentiary proceeding regarding the pending Rate Settlement Agreement (the "Settlement").

In support of its Petition, TEC states as follows:

1. TEC is a non-profit association of large commercial, industrial, and institutional energy users that own and operate facilities in Massachusetts. TEC's offices are located at 24 Hastings Road, Lexington, MA 02421-6807.

2. TEC includes members served by the companies that are parties to the proposed Settlement Agreement (collectively, "NSTAR"). TEC has intervened in numerous prior proceedings before the Department.

3. On December 6, 2005, NSTAR and the Attorney General of Massachusetts filed with the Department for approval the proposed Settlement in this matter.

4. By Notice of Filing and Public Hearing, the Department directed that any person interested in participating in the evidentiary phase of this proceeding file a written petition for leave to intervene or to participate no later than the close of business on Tuesday, December 20, 2005. The Department further directed that written comments also be filed by such time.

5. TEC does not hereby move that the Department initiate evidentiary hearings on this matter. In the event, however, that the Department, either on its own motion or on the motion of another person, determines that an investigation and evidentiary hearings are required, TEC requests leave to intervene in such proceedings.

6. In conducting adjudicatory hearings, the Department may “allow any person showing that he may substantially and specifically be affected by the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any limited purpose” as the Department may order. *See* G.L. c. 30A section 10, cl. (4); *see also* 220 CMR 1.03(1)(b).

7. TEC members that are customers of the NSTAR Electric Companies will be substantially and specifically affected by this proceeding because:

a. TEC’s members served by NSTAR are significant energy users. They are billed and pay significant sums to NSTAR and, in addition, because of their usage characteristics are affected by rates and tariffs, and changes in rates and tariffs, in ways that are fundamentally different from the ways in which other customers of NSTAR are affected.

b. Any resolution of issues during an investigation could affect the determination and allocation of costs, rates, tariff terms and conditions, tariff availability, conditions of merger, and other matters that could have a significant effect on members of TEC.

c. The interests of TEC members may not be the same as those of other NSTAR customers in regard to the appropriate resolution of issues such the allocation of costs, tariff availability and tariff terms and conditions.

d. Therefore, no other party participating in this proceeding may adequately represent the interests of TEC and its members in the instant matter.

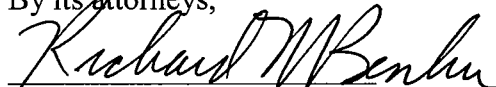
8. TEC has intervened or participated in similar D.T.E. proceedings.

WHEREFORE, if the Department on its own motion or the motion of another person determines to open an investigation and conduct evidentiary hearings, TEC respectfully request that the Department grant this petition for leave to intervene as a full-party intervenor and take such other actions as may be necessary and appropriate to allow such participation. In the event that the Department determines to not grant TEC full intervenor status, TEC requests that it be granted limited intervenor status with the right to receive service of all pleadings, discovery requests, discovery responses, and briefs as well as to file briefs and otherwise participate in this proceeding subject to such conditions as the Department may specify.

Respectful submitted,

The Energy Consortium

By its attorneys,



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Dated: December 20, 2005

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS
AND ENERGY**

Petition of Boston Edison Company,
Cambridge Electric Light Company,
Commonwealth Electric Company and
NSTAR Gas Company, Pursuant to
G.L. c. 164 § 94, and 220 C.M.R. § 5.00
et seq. for Approval of a Rate Settlement
Effective January 1, 2006

D.T.E. 05-85

CERTIFICATE OF SERVICE

I, Richard W. Benka, attorney for The Energy Consortium, hereby certify that on December 20, 2005 I have served a copy the comment letter of The Energy Consortium and The Energy Consortium's Conditional Petition to Intervene by first-class mail, postage prepaid, to:

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Dated: December 20, 2005